

# **Exhibit A**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

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ORACLE AMERICA, INC., )  
Plaintiffs, )  
vs. ) Case No.  
GOOGLE INC., ) 3:10-cv-03561 WHA  
Defendant. )  
-----)

VIDEOTAPED DEPOSITION OF SIMON PHIPPS  
San Francisco, California  
Saturday, May 7, 2016  
Volume I

Reported by:

CATHERINE A. RYAN

CSR No. 8239

Job No. 2304880

PAGES 1 - 107

PAGES 62-63 ARE ATTORNEYS' EYES ONLY AND BOUND  
UNDER SEPARATE COVER

UNITED STATES DISTRICT COURT  
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ORACLE AMERICA, INC.,                     )  
                    Plaintiffs,                     )  
vs.   ) Case No.  
GOOGLE INC.,                                 ) 3:10-cv-03561 WHA  
                    Defendant.                     )

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Videotaped deposition of SIMON PHIPPS,  
Volume I, taken on behalf of Plaintiffs, at 405  
Howard Street, Tenth Floor, San Francisco,  
California, beginning at 9:33 a.m. and ending at  
11:47 a.m., on Saturday, May 7, 2016, before  
CATHERINE A. RYAN, Certified Shorthand Reporter No.  
8239.

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## EXHIBITS

NUMBER	DESCRIPTION	PAGES
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Exhibit 5174	"Google's Proffer Re: GNU and the Custom and Practice Regarding Reimplementations of Java APIs"; 4 pages	7
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Exhibit 5175	"Java 2 Platform Standard Edition 5.0 API Specification"; Bates GOOGLE-13-00100931 - GOOGLE-13-00100940	7
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Exhibit 5176	Email series, "Subject: Re: Request for assistance with Apache's Java SE TCK license"; Bates OAGOOGL0004632503 - OAGOOGL0004632505	7
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Exhibit 5179	"Opinion, Oracle v. Google: We're not screwed yet"; 3 page	7
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## EXHIBITS (CONTINUED)

NUMBER	DESCRIPTION	PAGES
Exhibit 5180	Email series dated 3/8/2010, "Subject: Re: [OSPO-core] Re: Phipps...."; Bates GOOGLE-13-00047263 - GOOGLE-13-00047266 (Bound in a separate transcript marked "Attorneys' Eyes Only.")	7

Exhibit 5181	"Java SE IP Issues"; 4 pages	105
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## PREVIOUSLY MARKED EXHIBITS

NUMBER	DESCRIPTION	PAGES
Exhibit 610.1	"Specification: Java 2 Platform Standard Edition Development Kit 5.0 Specification"; 2 pages	45
Exhibit 5246	Email dated Mar 02, 2003, "Subject: Sun Proposal on WIPI"; Bates OAGOOGL0020194367 - OAGOOGL0020194368	89

1 San Francisco, California; Saturday, May 7, 2016

2 9:33 a.m.

3  
4 (Exhibit 5174, Exhibit 5175, Exhibit 5176,  
5 Exhibit 5179, and Exhibit 5180 were marked  
6 for identification by the court  
7 reporter.)

8  
9 THE VIDEOGRAPHER: Good morning. We're on  
10 video record on May 7th, 2016, and the time is 9:33  
11 a.m. This is the video-recorded deposition of Simon  
12 Phipps. My name is Cyril Syszckiewicz. I'm here  
13 with the court reporter, Catherine Ryan. We're both  
14 here representing Veritext Legal Solutions at the  
15 request of the plaintiffs. This deposition is being  
16 held today at Orrick in San Francisco, and the  
17 caption of the case is Oracle America versus Google.  
18 The case number is C1003561WHA.

19 Please note that the audio and video  
20 recordings will take place unless all parties agree  
21 to go off the record. Microphones are very  
22 sensitive, and they will pick up your private  
23 whispers and conversations.

24 And would everyone please identify  
25 themselves for the record.

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1 MR. OTTENWELLER: Chris Ottenweller,  
2 Orrick, representing the plaintiff, Oracle America.

3 MR. KWUN: Michael Kwun, Keker & Van Nest,  
4 here on behalf of the defendant, Google, and the  
5 witness.

6 MS. CARIDIS: Alyssa Caridis, Orrick  
7 Herrington & Sutcliffe, here on behalf of Oracle,  
8 and also Lisa Simpson of Orrick. We also have Gwyn  
9 Firth Murray, an expert in this case.

10 SIMON PHIPPS,  
11 having been administered an oath, was examined and  
12 testified as follows:

13 EXAMINATION

14 BY MR. OTTENWELLER:

15 Q Good morning, Mr. Phipps.

16 You are a former employee of Sun; is that  
17 correct?

18 A That is correct.

19 Q What years did you work for Sun?

20 A I joined Sun in 2000 and left Sun in 2010.

21 Q During that period of time, one of your  
22 positions was chief open source officer; is that  
23 correct?

24 A That's correct.

25 Q Is that a title that you coined yourself

1 or was that a title assigned by the corporation?

2 A That was a --

3 MR. KWUN: Objection. Form.

4 BY MR. OTTENWELLER:

5 Q Go ahead.

6 MR. KWUN: You can answer.

7 THE WITNESS: That was a title that was  
8 given to me by the chief executive -- by Jonathan  
9 Schwartz.

10 BY MR. OTTENWELLER:

11 Q And how long were you in that particular  
12 position?

13 A I don't recall precisely when I started in  
14 that position because I took over slowly from my  
15 predecessor, but it was from around about 2005 until  
16 leaving the company in March 2010.

17 Q Let me show you a document that we've  
18 marked as deposition Exhibit 5174.

19 A Thank you.

20 Q This is an excerpt of a pleading in this  
21 case that Google filed. It's entitled "Google's  
22 Proffer Re GNU and the Custom and Practice Regarding  
23 Reimplementations of Java APIs."

24 Let me ask you to turn to the second page  
25 of this document, and you see there is a reference

1 to you, Simon Phipps, Sun-Oracle, Chief Open Source  
2 Officer? Do you see that? At the bottom of the  
3 second page of this?

4 A I do.

5 Q All right. Let me read what this says,  
6 and then I'm going to ask you some questions about  
7 it. It reads as follows:

8 "Expected testimony: Google expects  
9 that Simon Phipps will testify that when  
10 he was chief open source officer at Sun in  
11 2007, it was an industry custom or  
12 practice to use declarations/SSOs without  
13 a license and that Sun's position was  
14 consistent with this industry custom, as  
15 evidenced by the fact, in his capacity as  
16 open source officer, Sun's CEO authorized  
17 him to reach out to the open source  
18 community, including GNU Classpath  
19 personnel, Dalibor Topic, Mark Weilaard,  
20 to assist with Sun's own implementation of  
21 the APIs in OpenJDK." End of the quote.

22 Did you have any involvement in composing  
23 that statement?

24 MR. KWUN: Objection. Form.

25 THE WITNESS: I believe that that

1 statement reflects conversations that I had with --  
2 yeah, it reflects statements that I had with KVN.

3 BY MR. OTTENWELLER:

4 Q By "KVN" you mean the Keker law firm?

5 A Yes.

6 Q When were those conversations?

7 A I really don't recall.

8 Q Give me an approximation.

9 A It would be late 2000 -- and so it would  
10 be something of the order of December 2015 --

11 Q What was your --

12 A -- I would guess, but I really -- I really  
13 don't recall.

14 Q What was the input you provided with  
15 respect to the drafting of that disclosure?

16 MR. KWUN: Objection. And I'm going to  
17 instruct the witness not to reveal the substance of  
18 any communications with counsel.

19 MR. OTTENWELLER: On what ground?

20 MR. KWUN: Privilege.

21 MR. OTTENWELLER: Starting when?

22 MR. KWUN: Privilege starting when we  
23 signed an engagement with him.

24 MR. OTTENWELLER: Give me the date of  
25 that, please.

1 MR. KWUN: The engagement was before that  
2 conversation. I don't have the date. I can get the  
3 date for you, though.

4 BY MR. OTTENWELLER:

5 Q Did you retain the Keker law firm to be  
6 your attorney?

7 A I have not.

8 Q Never have?

9 A Never have.

10 MR. OTTENWELLER: All right. Mr. Kwun, so  
11 you have no basis to assert any privilege in this  
12 case. So I'll go back to the question that I asked  
13 you.

14 Q What input did you provide with respect to  
15 the drafting of this disclosure?

16 MR. KWUN: Objection. Form.

17 THE WITNESS: I didn't help them with  
18 drafting a disclosure. I had a conversation with  
19 them about the -- the nature of the relationships  
20 that I had with the open source community.

21 BY MR. OTTENWELLER:

22 Q And that was with which attorney at the  
23 Keker law firm?

24 A I'm very bad at remembering people's  
25 correct names. I think it was Christa.

1 Q Christa Anderson?

2 A It would be Christa Anderson.

3 Q Okay. After you had this conversation  
4 with Ms. Anderson, did you then see a draft of the  
5 disclosure of your expected testimony?

6 A I have not seen that, no.

7 Q You see it now for the first time?

8 A I see a document you've given me.

9 Q Right. So looking at what the disclosure  
10 is in this particular exhibit, is that an accurate  
11 statement of the testimony you expect to give at  
12 trial in this case?

13 MR. KWUN: Objection. Form.

14 THE WITNESS: I'll need to read your  
15 document first.

16 BY MR. OTTENWELLER:

17 Q Well, there's nothing more to read other  
18 than what I read into the record. There's --

19 A Absolutely. But I -- as I say, I will  
20 still read it.

21 Q Read what?

22 A Well, I'll read the document that you gave  
23 me before I tell you whether I believe that it's an  
24 accurate statement.

25 Q You're permitted to read the --

1           A     Absolutely.

2           Q     -- portion pertaining to you.

3           A     Absolutely.  Yes.

4           Q     Go ahead, please.

5           A     Thank you.

6                     What is meant by SSOs?

7           Q     You're asking me?

8           A     Yes.

9           Q     Okay.  So you don't know what SSO refers  
10   to?

11          A     Not an abbreviation that I would have  
12   used, but it might refer to a term that I would use.

13          Q     All right.  So you don't know what SSOs  
14   refer to.

15                     Do you know what declarations --

16          A     Absolutely.

17          Q     -- refers to?

18                     Is that also another way of referring to  
19   declaring code?

20          A     Sir, a declaration, I would say, would be  
21   a function approach type, an API declaration or  
22   another way of including object code into a program  
23   that a -- a programmer is writing.

24          Q     So if I used the expression "declaring  
25   code" in respect to APIs, you would understand that

1 to refer to declarations?

2 A So --

3 MR. KWUN: Objection. Form.

4 THE WITNESS: -- it would depend on the  
5 context you were using the word, but I would expect  
6 that if you talked about including declarations in  
7 your program, that it would be to describe functions  
8 that you intend to use in your program later.

9 BY MR. OTTENWELLER:

10 Q All right. So let's assume, for the sake  
11 of our question and answer, that declarations means  
12 the same as declaring code.

13 Are we -- can we proceed on that basis?

14 A Yes.

15 Q All right. So you know -- first, let me  
16 ask you: Have you finished reading?

17 A I've read that --

18 Q The --

19 A -- two paragraphs.

20 Q Okay. Now I'll go back to the question I  
21 asked you.

22 Is this an accurate disclosure of the  
23 testimony that you intend to give at trial?

24 MR. KWUN: Objection. Form.

25 THE WITNESS: This would be a good summary



1 of what I would say.

2 BY MR. OTTENWELLER:

3 Q Okay. And with the possible notation that  
4 you're not sure what the acronym SSO refers to --

5 A If somebody used that term in  
6 conversation, I would ask them to clarify what they  
7 meant by it, yes.

8 Q All right. So let's assume for the sake  
9 of my questioning that SSO refers to Structure  
10 Sequence Organization.

11 Have you ever heard that before?

12 A So I've heard that term in the reporting  
13 from the -- from this case, but I don't recall  
14 hearing it in any other context.

15 Q All right. So you never heard that  
16 expression -- structure, sequence, organization --  
17 before you started talking to the Google lawyers; is  
18 that correct?

19 A No, that's not correct.

20 Q You did hear of it before?

21 A As you will be aware, I have been writing  
22 for InfoWorld, and I wrote coverage of the initial  
23 lawsuit back in 2010 in which it was a subject that  
24 was raised. So I have been aware of it from that  
25 point. And now you say that that's what SSO means.

1 Yes.

2 Q Other than what is disclosed for your  
3 expected trial testimony in Exhibit 5174, do you  
4 expect to give any other testimony in this case, if  
5 called as a witness?

6 MR. KWUN: Objection. Form.

7 THE WITNESS: I -- I'm not clear what  
8 testimony will be required from me, but I'll answer  
9 whatever questions are asked.

10 MR. OTTENWELLER: I appreciate that, but  
11 let's -- let me see if I can't learn a little bit  
12 more.

13 Q You've indicated that what we have just  
14 read as the Google disclosure is an accurate summary  
15 of the testimony you intend to give, correct?

16 MR. KWUN: Objection. Form.

17 THE WITNESS: We've agreed that this is a  
18 summary of a correct understanding of my position on  
19 this topic.

20 BY MR. OTTENWELLER:

21 Q Okay.

22 A I have no idea what questions are going to  
23 be asked to me in trial. So it's very hard to say  
24 what questions I will respond to, but I'm very happy  
25 to respond to the questions that I'm asked.

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1           Q     Do you believe you have knowledge that is  
2     relevant to issues in this case that goes beyond  
3     what is stated in the disclosure?

4           A     Yes. I think that's likely.

5           Q     Such as ...?

6           A     I say that I think it's likely.

7           Q     Can you give me an example?

8           A     I wouldn't instantly be able to give you  
9     an example. I would need to think through what the  
10    range of the case would be, but as I was an  
11    executive at the company during the period where  
12    some of these topics are being considered, it would  
13    be unthinkable that I wouldn't have knowledge and  
14    experience that were applicable outside the scope of  
15    this particular summary.

16          Q     Is this summary consistent with what you  
17    told Christa Anderson in the conversation you had  
18    with her?

19          A     I believe that it is a reasonable  
20    reflection of it.

21          Q     As I read the disclosure, there is a  
22    reference first to, quote, an industry custom or  
23    practice to use declarations/SSOs without a license.

24                 Do you see that phrase?

25          A     I do see that phrase.

1           Q       Do you agree that that appears to be a  
2       reference to a general industry custom?

3           MR. KWUN:  Objection.  Form.

4           THE WITNESS:  I would say that that  
5       appears to be a reference to a general practice by  
6       software developers.

7       BY MR. OTTENWELLER:

8           Q       What industry?

9           A       In the software industry.

10          Q       And is that a practice that you believe  
11       refers to a practice involving the declarations and  
12       SSOs of APIs?

13          MR. KWUN:  Objection.  Form.

14          THE WITNESS:  I believe that it's -- that  
15       -- as a programmer, which I have been a programmer  
16       in the past, I would not give a second thought about  
17       the existence of a license for function declarations  
18       that I'm putting at the top of a program.

19       BY MR. OTTENWELLER:

20          Q       Well, I'm not sure that was responding to  
21       the question I asked you.  I'm trying to learn the  
22       boundaries of what your expected testimony are.

23                 The reference to declarations and SSO --  
24       do you understand that in this disclosure that is a  
25       reference to declarations and SSOs of APIs?

1 MR. KWUN: Objection. Form.

2 THE WITNESS: I do understand that form of  
3 understanding that you're referring to, yes.

4 BY MR. OTTENWELLER:

5 Q In your own words, if you could,  
6 Mr. Phipps, tell me what you believe the custom or  
7 practice was during the time period 2005 through  
8 2007 in the software industry about using  
9 declarations and SSOs of APIs without a license.

10 A Okay. So I have to clarify for you. I  
11 would not be able to comment on SSOs as you  
12 described them because that's a construct which is  
13 really outside of my daily practice beyond reporting  
14 this case. When it comes to --

15 Q I appreciate -- I appreciate you going on  
16 the record with that.

17 So just so we're clear, you do not believe  
18 you are in a position to testify about what the  
19 custom and practice was with respect to structure,  
20 sequence, and organization of APIs, correct?

21 A No, I don't think I would agree with that  
22 statement.

23 Q What's wrong with my statement?

24 A I think that the -- the statement that  
25 you're making there suggests that I wouldn't be able

1 to comment on the people's practice when it came to  
2 the structure and sequence -- the -- their  
3 expectations associated with the structure and  
4 sequence of APIs. I think I can comment on what  
5 people did. I can talk about practice.

6 What I would not be able to do would be to  
7 go beyond commenting on practice as to what the  
8 nature of the general understanding of SSOs was in  
9 the industry.

10 Q Well, going back to my question, I asked  
11 you to focus on the time period 2005 through 2007.

12 You were not even familiar with the  
13 expression "structure, sequence, organization" back  
14 then, right?

15 A That's -- that's correct.

16 Q So there's no way you could have known  
17 what any custom or practice was with respect to that  
18 back then, correct?

19 A No, that's -- that's incorrect.

20 MR. KWUN: Objection. Form.

21 BY MR. OTTENWELLER:

22 Q You didn't know what the expression meant,  
23 correct?

24 A The expression --

25 Q "Yes" or "no." You didn't know what the

1 expression meant during the time period 2005 through  
2 2007; do I have that right?

3 A I was not familiar with that as an  
4 expression for the concept it describes.

5 Q Okay. So let's -- let's go to the time  
6 period 2005 through 2007.

7 A Okay.

8 Q You do feel comfortable in giving  
9 testimony as to what you think the practice was with  
10 respect to using declarations of APIs without a  
11 license during that period of time?

12 A I'm happy with that.

13 Q State in your own words what you think the  
14 practice was at that point in time.

15 A A programmer would expect to be able to  
16 declare any functions that they would later have  
17 included by linking or by a dynamic reference in  
18 their program, and they would use those function  
19 declarations without regard to license because they  
20 would not expect to need a license to use the  
21 declaration, although they might expect to need it  
22 -- or they should expect to need a license to the  
23 implementation later on when the program is linked.

24 Q You testified with reference to  
25 programmers that, quote, "they should expect to need

1 a license to the implementation later on when the  
2 program is linked," correct?

3 A Yes.

4 Q And that, in your view, was a general  
5 expectation with respect to the declarations of  
6 APIs, correct?

7 A Yes.

8 MR. KWUN: Objection. Form.

9 BY MR. OTTENWELLER:

10 Q So if one views the practice within the  
11 software industry during this time period, 2005  
12 through 2007, there was an expectation, as far as  
13 you know, that a license at some point would be  
14 required, correct?

15 A A copyright license, yes.

16 Q Yes. Thank you.

17 In describing what you view as the  
18 practice in the software industry back in this time  
19 period, 2005 through 2007, what are you basing your  
20 testimony on?

21 A I'm basing my testimony on my own  
22 experience programming, and I'm also basing it on  
23 the observed practice of the software developers  
24 that I met at conferences, who I encountered within  
25 Sun Microsystems, who I worked with within



1 customers, and who I encountered through contact on  
2 the Internet and mailing lists and other social  
3 media of the time.

4 Q You're basing it first on your own  
5 personal expectations, correct?

6 A Yes.

7 Q Now, you would agree with me, would you  
8 not, that your own personal expectations don't make  
9 an industry-wide custom, right?

10 MR. KWUN: Objection. Form.

11 THE WITNESS: They would reflect -- they  
12 would be more likely to reflect an industry-wide  
13 custom, yes.

14 BY MR. OTTENWELLER:

15 Q They don't make the custom, though, do  
16 they?

17 MR. KWUN: Objection. Form.

18 THE WITNESS: Well, obviously not. The --  
19 the --

20 BY MR. OTTENWELLER:

21 Q Because you're one -- you're just one  
22 individual.

23 A Absolutely.

24 Q Right?

25 All right. So you would agree, when you

1 say your own personal experiences, that can't be  
2 evidence of a industry-wide custom, correct?

3 MR. KWUN: Objection. Form.

4 THE WITNESS: I would suggest to you that,  
5 unless I was a very unusual programmer, I would find  
6 it very difficult to work in a way that was not the  
7 norm amongst my professional practice.

8 BY MR. OTTENWELLER:

9 Q Did you ever do a survey to see if that  
10 was true?

11 A No. Why would one do a survey of a thing  
12 that was observable in every programming -- in every  
13 project that one encountered?

14 Q So what did you observe? And by that I  
15 mean, what specifically did you observe that leads  
16 to the basis for this view?

17 A Well, we'll have to go back. I have a  
18 degree in electronic engineering, and I worked on  
19 writing computer software as part of that degree. I  
20 was trained to do so. And I wrote a compiler as  
21 part of my degree course. I wrote it in the Pascal  
22 programming language, and that involved making  
23 declarations. And at no point was I advised to  
24 check that I had a license to the declarations that  
25 I was using.

1           And then at every point in my career when  
2   I was performing programming tasks in other  
3   languages from that point onwards, no employer  
4   suggested to me that I needed to be cautious of the  
5   declarations. They always were wanting to make sure  
6   I was cautious that I had the -- that I had paid for  
7   the -- the software when it was deployed, but that  
8   was never a part of the programming experience. And  
9   that continued to be my experience when I was  
10   working for IBM, and that continued to be my -- I  
11   didn't do any programming at Sun, but it continued  
12   to be my observation of the programmers around me.

13           And the advantage I had at Sun was of  
14   working in the open source community, where I had  
15   visibility into a number of other projects to see  
16   what their practices were. And at no point do I  
17   recall seeing an example which would suggest that my  
18   personal practice was in some way unusual.

19   BY MR. OTTENWELLER:

20           Q     Let me -- let me make sure that I -- that  
21   I understand the full scope of what you're saying.

22                    So you're referring to your experience as  
23   a software programmer, right?

24           A     Yes.

25           Q     And to rephrase what you said, you said,

1 as a software programmer, you would do certain  
2 things without worrying yourself about the need for  
3 a license, correct?

4 MR. KWUN: Objection. Form.

5 THE WITNESS: So what I said was that, as  
6 a programmer, the point at which concern over  
7 whether you had a license to the software was the  
8 point at which you created the final work, not the  
9 point at which you were writing the software or  
10 making declarations.

11 BY MR. OTTENWELLER:

12 Q Right. So at some point in the experience  
13 that you're describing, a license comes into the  
14 picture, right?

15 A Yes.

16 MR. KWUN: Objection. Form.

17 MR. OTTENWELLER: Mr. Kwun, please let the  
18 witness answer so that we don't have an objection  
19 interfering with the answer, please. Just the two  
20 of you coordinate, please.

21 MR. KWUN: Yeah. So I think -- I think  
22 probably the best practice is that -- Mr. Phipps, if  
23 you could try to make sure that you pause before  
24 answering to allow me to make an objection if I have  
25 to make an objection.

1 THE WITNESS: Okay.

2 BY MR. OTTENWELLER:

3 Q You, as the programmer, if I understand  
4 the testimony you're giving -- giving, didn't  
5 concern yourself with a license, but down the road  
6 somebody else did concern themselves with a license,  
7 right?

8 MR. KWUN: Objection. Form.

9 THE WITNESS: I wouldn't believe that that  
10 would be a good description. I would suggest that a  
11 programmer will always want to make sure that the  
12 work that they finally create is not in breach of  
13 anyone's copyright. And so they'll want to make  
14 sure they have licenses, but at the time that you're  
15 writing the program, the -- the function  
16 declarations you make at the top end, whatever  
17 programming language you use, not the point at which  
18 that's a concern for you.

19 You would be foolish to use software where  
20 you did not have an expectation later of being able  
21 to secure a license, but you would never think,  
22 while you were putting function declarations in the  
23 top, that they themselves needed to have a license.

24 BY MR. OTTENWELLER:

25 Q Is the experience that you're describing

1 as a programmer a specialized experience that you  
2 acquired because of your education and your work  
3 responsibilities?

4 MR. KWUN: Objection. Form.

5 THE WITNESS: I don't believe my  
6 experience is exceptional. I believe that I have a  
7 very normal education when it comes to technology,  
8 and I -- I am certainly not a high-flying,  
9 exceptional programmer.

10 BY MR. OTTENWELLER:

11 Q Can you identify for me during the  
12 2005-2007 time frame any entity -- corporation,  
13 organization -- that you believe -- well, we'll get  
14 back to that later. Strike that question.

15 So I asked you what your testimony about  
16 the use of declarations of APIs was based upon, and  
17 you answered that question by referring to your  
18 experience as a programmer, right?

19 MR. KWUN: Objection. Form.

20 THE WITNESS: That was one of the things  
21 that I mentioned, yes.

22 BY MR. OTTENWELLER:

23 Q During the time frame 2005 through 2007,  
24 was it a -- was it a practice in the software  
25 industry for the owner of APIs to make their APIs

1 available without a license?

2 MR. KWUN: Objection. Form.

3 THE WITNESS: It was very common and  
4 remains common for people who want their libraries,  
5 frameworks, and other attributes used to emphasize  
6 them strongly and not to emphasize any of the  
7 licensing attributes.

8 BY MR. OTTENWELLER:

9 Q All right. I'm going to ask you to listen  
10 to the question again because you understand we have  
11 limited time for this deposition. So I need you to  
12 answer the question I asked you. Now, the court  
13 reporter is going to read it back to you. Listen to  
14 me carefully and give me an answer that responds to  
15 that question if you could, please.

16 (Record read by the reporter as follows:

17 "QUESTION: During the time frame 2005  
18 through 2007, was it a practice in the  
19 software industry for the owner of APIs to  
20 make their APIs available without a  
21 license?")

22 MR. KWUN: I'd just renew my objection.

23 THE WITNESS: And, once again, I'll  
24 respond to you that, within the overall propagation  
25 of a piece of software, they would -- it is typical

1 for a -- the owner of a piece of software to  
2 emphasize the APIs without reference to licensing,  
3 although the reference to licensing is always  
4 included in the overall delivery that they're  
5 making.

6 BY MR. OTTENWELLER:

7 Q So you're talking about what is emphasized  
8 and what is not.

9 A What I'm --

10 Q Is that what you're saying? Is that what  
11 you're saying?

12 A What I'm saying is that, as a programmer,  
13 what I see is the invitation to use the API. What I  
14 do not see is an instruction to buy a license.

15 Q All right. Isn't it true that, during the  
16 time frame we've been talking about -- 2005 to 2007  
17 -- generally owners of APIs made them available  
18 subject to licensing terms, "yes" or "no"?

19 MR. KWUN: Objection. Form.

20 THE WITNESS: I would say no, that that's  
21 not an accurate and complete description.

22 BY MR. OTTENWELLER:

23 Q All right. So can you identify for me any  
24 owner of any API during the 2005-2007 time frame who  
25 made their APIs available without a license?



1           A       I would need to --

2                   MR. KWUN:  Objection.  Form.

3                   THE WITNESS:  I would need to perform  
4   research to give you an accurate answer to that  
5   question.

6   BY MR. OTTENWELLER:

7           Q       You haven't done such research?

8           A       I have not been asked the question before.

9           Q       So as you sit here today in this  
10   deposition, you cannot identify a single entity who,  
11   during the 2005-2007 time frame -- who owned APIs,  
12   made them available without a license, right?

13                  MR. KWUN:  Objection.  Form.

14                  THE WITNESS:  Once again, I will emphasize  
15   for you that I have not performed the research  
16   necessary to answer that question.

17   BY MR. OTTENWELLER:

18           Q       So you can't identify any?

19           A       I would be able to identify them, but at  
20   this deposition I'm not able to identify them  
21   because I have not performed the necessary research.

22           Q       Can you identify, sir, any entity during  
23   the 2005-2007 time frame who used someone else's  
24   copyrighted APIs in violation of a license?

25                  MR. KWUN:  Objection.  Form.

1 THE WITNESS: I could not think of an  
2 answer to that question.

3 BY MR. OTTENWELLER:

4 Q You can't identify any?

5 A Well, I'd have -- the question that you're  
6 asking me is a question that is quite complicated,  
7 and it would require research to look through cases  
8 to understand what the behavior of specific  
9 companies, what -- and entities was. So asking me  
10 the question without any notice means that I'm  
11 unable to give you an answer to a question which I  
12 reasonably believe I would be able to answer if you  
13 were to give me sufficient notice to answer it.

14 Q But as you sit here, you cannot identify  
15 any facts that would indicate that there was --  
16 there was any entity who used someone else's  
17 copyrighted APIs without a license during the time  
18 period we're discussing, right?

19 MR. KWUN: Object -- objection. Form.

20 THE WITNESS: I reiterate that I'm telling  
21 you that within this deposition I cannot give you  
22 that information because it would require research  
23 which I have not been asked to perform.

24 BY MR. OTTENWELLER:

25 Q So your statement about what was the

1 practice or custom in the software industry is based  
2 on just a general notion and not specific hardcore  
3 facts; is that a fair characterization?

4 MR. KWUN: Objection. Form.

5 THE WITNESS: My perception is based on  
6 the observable practice of open source and other  
7 developers that I have seen before.

8 BY MR. OTTENWELLER:

9 Q Can you be more specific as you sit here?

10 A I can observe that open source programmers  
11 and other programmers are happy to include  
12 declarations in their programs without asking at  
13 that point the question of whether there is a  
14 license for the code because they would not expect  
15 that to be an act that would need a license.

16 Q But at some point someone does inquire  
17 about whether there's a license, right?

18 MR. KWUN: Objection. Form.

19 THE WITNESS: So when you're using  
20 software, the implementation of the software is  
21 copyrightable, and you would expect to need a  
22 license for it.

23 MR. OTTENWELLER: Thank you.

24 Q Let's now talk about Sun.

25 During the period that we've been talking

1 about -- 2005 through 2007 -- when you were a Sun  
2 employee, Sun was the owner of the Java APIs, right?

3 MR. KWUN: Objection. Form.

4 THE WITNESS: Sun was the author of the  
5 Java platform, and that included the APIs.

6 BY MR. OTTENWELLER:

7 Q And you understand that the APIs that Sun  
8 authored were copyrighted, correct?

9 MR. KWUN: Objection. Form.

10 THE WITNESS: So I'm not an expert in  
11 copyright law. So I would be very cautious about  
12 making an answer to your question there.

13 BY MR. OTTENWELLER:

14 Q Well, you were an employee who worked with  
15 the APIs, were you not?

16 A I would not describe myself as an employee  
17 who worked with the APIs. Java was one of a number  
18 of different projects --

19 Q All right.

20 A -- in that time period I was helping to  
21 become open source.

22 Q All right. So Java was not your primary  
23 focus --

24 MR. KWUN: Objection. Form.

25 //

1 BY MR. OTTENWELLER:

2 Q -- correct?

3 A So my role included oversight for the open  
4 -- the open sourcing of Java. So it was for -- at  
5 some period a primary focus, but not as a technical  
6 implementation language.

7 Q All right. Let's go back to the question,  
8 though, I'm trying to get an answer to.

9 While you were a Sun employee, did you  
10 have an understanding that the Java APIs were  
11 copyrighted by Sun?

12 A No.

13 Q But you did know that they were authored  
14 by Sun, right?

15 A They were part of -- the Java APIs are the  
16 declarations of the Java platform, which is authored  
17 by Sun. So they are a part of that authored  
18 platform, yes.

19 Q What is your expected testimony as to what  
20 practice Sun followed in 2005 through 2007 with  
21 respect to making the declaring code and SSO of the  
22 Java APIs available to others?

23 MR. KWUN: Objection. Form.

24 THE WITNESS: Yeah, I'm not sure that I am  
25 expecting to make any testimony about that. I would

1       rather you asked a question about it.

2       BY MR. OTTENWELLER:

3           Q       Well, I have asked you a question.

4                   Do you understand the subject matter of my  
5       question?

6           A       I understand the subject matter of your  
7       question, but you've asked me what testimony I'm  
8       going to give, and I can't know that until somebody  
9       asks me a question about it.

10          Q       Well, let me ask the question this way:  
11       What knowledge do you have as to what practice was  
12       followed at Sun in 2005 through 2007 with respect to  
13       making the declaring code and SSO of the Java APIs  
14       available to others?

15                 MR. KWUN:  Objection.  Form.

16                 THE WITNESS:  I observed that it was going  
17       on and observed that we were making that -- making  
18       the Java platform available as open source to open  
19       source communities, particularly the Debian  
20       community.

21       BY MR. OTTENWELLER:

22          Q       Isn't it true, Mr. Phipps, that during  
23       that time period Sun made the declaring code and SSO  
24       of the APIs available to entities through a  
25       commercial license?

1           A       That's absolutely true, but it was outside  
2       the scope of my job responsibilities.

3           Q       You weren't responsible for the commercial  
4       licenses, right?

5           A       That's correct.

6           Q       But you do know that there was a practice  
7       at Sun during the time you were there to make the  
8       declaring code and APIs available through a  
9       commercial license, correct?

10           MR. KWUN: Objection. Form.

11           THE WITNESS: I'm aware that the Java  
12       platform was being made available to licensees.

13       BY MR. OTTENWELLER:

14           Q       And that included the declaring code and  
15       SSO of the APIs, did it not?

16           A       It did, but you asked specifically about  
17       the APIs necessarily, and I would expect those to be  
18       licensed together with the implementations.

19           Q       Okay. Good.

20                   And that was a prevalent practice at Sun  
21       during that time period, was it not?

22           A       Could you explain what you mean by  
23       "prevalent"?

24           Q       There were multiple commercial licenses  
25       under which Sun allowed others to use the Java APIs,

1 right?

2 A Right.

3 MR. KWUN: Objection. Form.

4 BY MR. OTTENWELLER:

5 Q A lot of such licenses, right?

6 A It depends on how you want to define "a  
7 lot." I believe there to have been a significant  
8 number, yes.

9 Q Right. So it was a prevalent activity,  
10 was it not?

11 MR. KWUN: Objection. Form.

12 THE WITNESS: Well, prior to us making  
13 Java available as open source, the only way that  
14 somebody would have been able to get ahold of Java  
15 would have been through a download that was subject  
16 to a -- the -- a license for the binary that they  
17 were downloading.

18 BY MR. OTTENWELLER:

19 Q Right. Okay. So up until the time that  
20 OpenJDK became available, access to the declaring  
21 code and SSO of the APIs was all through a license,  
22 right?

23 MR. KWUN: Objection. Form.

24 THE WITNESS: The -- the Java -- we made  
25 the Java platform available to the Debian community



1 under a license that was different to the commercial  
2 licenses that would have been issued to commercial  
3 individual licensees.

4 BY MR. OTTENWELLER:

5 Q Right. You had the commercial licenses,  
6 and then you had what Sun referred to as a  
7 specification license, right?

8 MR. KWUN: Objection. Form.

9 THE WITNESS: Sun had a specification  
10 license, but that's not what I'm referring to.

11 BY MR. OTTENWELLER:

12 Q All right. Well, let's -- let's show you  
13 the document that we marked as deposition Exhibit  
14 5175. This is a document entitled "Java 2 Platform  
15 Standard Edition 5.0 API Specification."

16 You recognize this, don't you, Mr. Phipps,  
17 as the API specifications for the Java Standard  
18 Edition 5.0?

19 A It looks like it. Where did it come from?  
20 I would never --

21 Q Well, this is --

22 A I wouldn't typically have seen it in this  
23 form, so ...

24 Q Well, this was, as you can --

25 A It's --

1 Q Lawyers, when they're in lawsuits, put  
2 numbers at the --

3 A Right.

4 Q -- in the --

5 A But --

6 Q -- lower right-hand corner.

7 A But I'm interested in the prevalence of  
8 the -- of -- you know, is this off the website? Is  
9 this out of the -- the errata book? Is -- where is  
10 this from?

11 Q Well, I'm not sure I can tell you that,  
12 but I can tell you that it was produced in this case  
13 by Google.

14 A Okay.

15 Q So --

16 A I mean, it looks like the -- the Java API.  
17 It actually looks like the JavaDoc-generated version  
18 of the API.

19 Q Right. Turn, if you would, to the very  
20 last page -- oh, before we -- before we do that, let  
21 me just ask you, to determine how much you know  
22 about this: Do you understand that this  
23 specification refers to the APIs that Google is  
24 accused of copying in this case?

25 MR. KWUN: Objection. Form.

1 THE WITNESS: I understood that -- that  
2 Google was accused of using a subset of these API  
3 declarations.

4 BY MR. OTTENWELLER:

5 Q Right. So you do have that understanding?

6 A I have that -- the understanding that  
7 we're talking about a subset.

8 Q A subset of --

9 A Thirty-six function clauses.

10 Q Right. A subset of the APIs referenced in  
11 this particular exhibit?

12 A Mm-hmm.

13 Q You have to say "yes" or "no," sir.

14 A Yes.

15 Q Thank you.

16 Turn, if you would, to the very last page,  
17 and the very last line -- first, there's a copyright  
18 notice; you see that? "Copyright --"

19 A Mm-hmm.

20 Q "-- 2004 Sun Microsystems." So that may  
21 give you some hint that the APIs were copyrighted,  
22 correct?

23 MR. KWUN: Objection. Form.

24 THE WITNESS: That would not be the  
25 conclusion I would instantly come to. It would give

1 me an indication that somebody is claiming there is  
2 a copyright.

3 BY MR. OTTENWELLER:

4 Q All right.

5 A But the copyright could be -- could --  
6 there are other -- there are a number of ways that I  
7 would expect, as a layman, copyright to occur,  
8 including as the compilation of facts rather than  
9 the specific facts that are in the document.

10 Q Notice in that very last line on the very  
11 last page of Exhibit 5175 there's a statement that  
12 reads, quote, "Use is subject to license terms,"  
13 closed quote.

14 While you were employed by Sun, did you  
15 understand that the use of the APIs was subject to  
16 license terms?

17 MR. KWUN: Objection. Form.

18 THE WITNESS: I don't believe that's a  
19 well formed question.

20 BY MR. OTTENWELLER:

21 Q Well, can you answer it even though you  
22 may have some quarrel with how it's formed?

23 A Well --

24 Q Do you want to hear it back?

25 A Well, the difficulty I have with the

1 question is that you insist on continuing to talk  
2 about the use of APIs. An API is useless without an  
3 implementation. The license generally applies to  
4 the implementation. So the use of this with regard  
5 to license terms is going to refer to the overall  
6 use of it with regard to creating an implementation.  
7 I would not expect there to be a restriction on  
8 including any of these function calls in my program.

9 Q Well, that's not what I was really asking  
10 you. So --

11 A Right. And this is why I say I believe  
12 your question was incorrectly formed.

13 Q So let me -- let me ask you a related  
14 question and see if we can't get to the point.

15 This is a document that refers to Java  
16 APIs, correct?

17 A This is a document that describes the Java  
18 -- part of the Java platform.

19 Q APIs. It says so right here, sir. "API  
20 specification."

21 A Well, it's the specification of the APIs  
22 for the Java platform.

23 Q Fine. Thank you.

24 And it also says that use of whatever is  
25 referred to in this document is subject to license

1 terms, true?

2 MR. KWUN: Objection. Form.

3 THE WITNESS: I would expect that, to use  
4 these APIs, I would become subject to license terms  
5 at some stage in the development of my software,  
6 yes.

7 BY MR. OTTENWELLER:

8 Q Now, the license that use is subject to  
9 can be ascertained -- I assume you know -- by  
10 clicking on the link --

11 A Mm-hmm.

12 Q -- that is referenced there.

13 And so we did that, and we came up with  
14 trial Exhibit 610.1, which I will show you.

15 You recognize trial Exhibit 610.1, do you  
16 not?

17 A It looks like some generation of the Java  
18 license -- Java specification license.

19 Q Right. So during the time period that you  
20 were at Sun, Sun made the Java APIs, including the  
21 declaring code and SSO, available for use by others  
22 pursuant to this specification license, true?

23 MR. KWUN: Objection. Form.

24 THE WITNESS: Under this -- under this  
25 specification license and other arrangements.

1 BY MR. OTTENWELLER:

2 Q True? I need to hear a "Yes" from you,  
3 sir.

4 MR. KWUN: Objection. Form.

5 THE WITNESS: What I'm -- what I'm saying  
6 to you is it's "Yes and." Yes, it was made  
7 available under this license and others.

8 BY MR. OTTENWELLER:

9 Q All right. So -- so a more accurate  
10 statement, I guess, would be this: Isn't it true  
11 that, during the time that you were at Sun, Sun made  
12 available the declaring code and the SSO of the Java  
13 APIs available for use by others pursuant to the  
14 specification license plus other licenses --

15 MR. KWUN: Objection.

16 BY MR. OTTENWELLER:

17 Q -- right?

18 MR. KWUN: Objection. Form.

19 THE WITNESS: I continue to say that  
20 within the context of the Java platform, yes.

21 Could I get a refill?

22 BY MR. OTTENWELLER:

23 Q We have discussed Sun's commercial  
24 licenses and Sun's specification licenses so far,  
25 correct?

1           A       I -- I believe so. I'd have to look at  
2       the transcript to find out exactly what we did.

3           MR. KWUN: Thank you.

4           THE WITNESS: Thank you.

5       BY MR. OTTENWELLER:

6           Q       In describing what was Sun's practice  
7       during 2005 to 2007, with respect to making the  
8       declaring code and the SSO of the Java APIs  
9       available to others, one has to take into account  
10      the commercial licenses. You would agree with that,  
11      would you not?

12          MR. KWUN: Objection. Form.

13          THE WITNESS: Could you read the question?  
14      It was a rather complicated question.

15          MR. OTTENWELLER: The court reporter can  
16      read it back to you.

17          (Record read by the reporter as follows:

18              "QUESTION: In describing what was  
19              Sun's practice during 2005 to 2007, with  
20              respect to making the declaring code and  
21              the SSO of the Java APIs available to  
22              others, one has to take into account the  
23              commercial licenses. You would agree with  
24              that, would you not?")

25          THE WITNESS: I would agree that in the



1 context where the commercial licenses were  
2 applicable, you would absolutely have to refer to  
3 them, yes.

4 BY MR. OTTENWELLER:

5 Q And one would also have to take into  
6 account the specification licenses, correct?

7 MR. KWUN: Objection. Form.

8 THE WITNESS: I would say that you have to  
9 take the specification license into account where it  
10 is applicable, yes.

11 BY MR. OTTENWELLER:

12 Q In order to understand what practice Sun  
13 followed, right?

14 MR. KWUN: Objection. Form.

15 THE WITNESS: In order to understand the  
16 overall context of the Java platform as a commercial  
17 licensee, that would be one of the things that you  
18 would have to understand, yes.

19 BY MR. OTTENWELLER:

20 Q Right. So in looking at the practice that  
21 Sun followed, we see that there's evidence that they  
22 offered the APIs as part of a commercial license,  
23 right?

24 A Right.

25 Q They offer the APIs as part of the

1 specification license, right?

2 MR. KWUN: Objection. Form.

3 THE WITNESS: Yes.

4 BY MR. OTTENWELLER:

5 Q Now, there was a third way in which Sun  
6 made the Java APIs available to entities who wanted  
7 to use them, and that was OpenJDK, correct?

8 MR. KWUN: Objection. Form.

9 THE WITNESS: OpenJDK did come into  
10 existence later, yes.

11 BY MR. OTTENWELLER:

12 Q Right. And OpenJDK is an open source  
13 arrangement, is it not?

14 A Yes.

15 Q So before I ask you some questions about  
16 OpenJDK, let me make sure that we are together on  
17 this.

18 There were three ways in which Sun made  
19 the Java APIs available to others during the 2005  
20 through 2007 time period: commercial licenses,  
21 specification licenses, and OpenJDK, agreed?

22 MR. KWUN: Objection. Form.

23 THE WITNESS: I believe there were --  
24 there -- you might consider the making available of  
25 Java to the Debian community as a fourth way, yes.

1 BY MR. OTTENWELLER:

2 Q But the three ways that I mentioned -- I'm  
3 going to focus on that for the time being -- those  
4 were all subject to license terms, were they not?

5 MR. KWUN: Objection. Form.

6 THE WITNESS: Each way that Java is made  
7 available was subject to license terms applicable to  
8 the overall platform.

9 BY MR. OTTENWELLER:

10 Q Even the OpenJDK was subject to license  
11 terms, was it not?

12 A Absolutely.

13 Q It was subject to the GNU general public  
14 license and the terms in that, was it not?

15 MR. KWUN: Objection. Form.

16 THE WITNESS: It was subject to the GPL v2  
17 plus some exceptions, yes.

18 BY MR. OTTENWELLER:

19 Q Okay. We've been talking about the  
20 practice that Sun followed in making the Java APIs  
21 available for use. Now let's look at this issue  
22 from the perspective of entities who use the Java  
23 APIs, okay?

24 A Okay.

25 Q So those entities who signed the

1 commercial licenses used the Java APIs pursuant to  
2 license terms, right?

3 MR. KWUN: Objection. Form.

4 THE WITNESS: They would have been subject  
5 to license terms, yes.

6 BY MR. OTTENWELLER:

7 Q And those entities who used the Java APIs  
8 pursuant to the specification license also used them  
9 pursuant to license terms, correct?

10 MR. KWUN: Objection. Form.

11 THE WITNESS: So just could you read that  
12 back again or say --

13 BY MR. OTTENWELLER:

14 Q I'll -- I'll rephrase it.

15 A -- say it again.

16 Q I'll say it again.

17 Those entities who used the Java APIs  
18 pursuant to the specification license, used them  
19 pursuant to license terms, correct?

20 MR. KWUN: Objection. Form.

21 THE WITNESS: Well, they used the Java  
22 platform pursuant to license terms, not just the  
23 APIs.

24 BY MR. OTTENWELLER:

25 Q But including the APIs?

1           A       Well, the APIs didn't need a license, but  
2       the platform, as a whole, was subject to license  
3       terms, and the API is a part of the platform when  
4       the whole thing is licensed together.

5           Q       Well, now, Mr. Phipps, we just looked at a  
6       document that -- you can look at it again. We  
7       looked at Exhibit 5175, which is a listing of the  
8       APIs -- the Java APIs. Do you have that in front of  
9       you?

10          A       It's that one. Yes.

11          Q       I asked you point blank, in referring to  
12       the very end of this document, wasn't the use of the  
13       APIs referred to in this document subject to license  
14       terms, and you answered "Yes," did you not?

15               MR. KWUN: Objection. Form.

16               THE WITNESS: So I believe that I've been  
17       consistent in making sure that we always refer to  
18       the use of the Java platform rather than just the  
19       APIs. And the use of the Java APIs within the  
20       context of the platform does require a license, and  
21       so the generic statement that appears at the end of  
22       all of these documents refers to the Java platform.  
23       It says here: "Java 2 Platform Standard Edition  
24       5.0."

25               So everything -- everything related to the

1     Java 2 platform is subject to license terms, and  
2     those license terms refer to the overall work.

3     BY MR. OTTENWELLER:

4             Q     And that would include the APIs, right?

5             MR. KWUN:  Objection.  Form.

6             THE WITNESS:  Well, the -- it includes the  
7     APIs within the context of the overall platform.

8     BY MR. OTTENWELLER:

9             Q     And it would include the declaring code  
10     and the SSO of the APIs, right?

11            A     I couldn't comment on whether it includes  
12     the SSO.  The declaring code I would expect to be  
13     used -- usable without the license, although I would  
14     also expect that declaring code to -- because it is  
15     part of the larger work, to be included within the  
16     scope of the larger work.

17            Q     So, I mean, let me make sure I understand  
18     what you're saying.

19                    The declaring code is part of the API, is  
20     it not?

21            MR. KWUN:  Objection.  Form.

22            THE WITNESS:  And so the declaring code is  
23     -- as a -- as a software developer, the declaring  
24     code is what I would understand to be the API.

25     //

1 BY MR. OTTENWELLER:

2 Q "To be the API." Is that what you're  
3 saying?

4 A I would consider the declarations that I  
5 include in my program in order to reference an  
6 external binary implementation to be the API.

7 Q So to the extent the API had licensing  
8 terms, the declaring code would have licensing  
9 terms, right?

10 MR. KWUN: Objection. Form.

11 THE WITNESS: Well, I've just stated that  
12 the declaring code, as far as a programmer is  
13 concerned, is the API, and so the -- the programmer  
14 -- as a programmer, I would not expect to have to  
15 worry about license terms in isolation from the  
16 larger work.

17 BY MR. OTTENWELLER:

18 Q Isn't it true, Mr. Phipps, that when you  
19 were at Sun as an employee, Sun made the declaring  
20 code and the SSO of its Java APIs available only if  
21 the users subscribed to license terms?

22 MR. KWUN: Objection. Form.

23 THE WITNESS: I'd have to think about that  
24 question because I think that the -- the Java API  
25 was widely reported in educational books and the

1 media, as well as through the terms of these  
2 particular licenses, and so, consequently, I would  
3 stick to saying that, whenever I'm thinking about  
4 licensing, it's always in the context of the Java  
5 platform rather than the APIs in isolation.

6 BY MR. OTTENWELLER:

7 Q The question was: Isn't it true that,  
8 while you were at Sun, that Sun made the declaring  
9 code and SSO of the Java APIs only available for use  
10 through a license?

11 MR. KWUN: Objection. Form.

12 THE WITNESS: I think that would be --  
13 that would be a good general statement, but it would  
14 require analysis to work out exactly how it was true  
15 in each case.

16 MR. OTTENWELLER: Let's take a break now  
17 with the one-hour mark.

18 THE VIDEOGRAPHER: Okay. We're off the  
19 record at 10:32.

20 MR. KWUN: Did we need to change the tape  
21 or anything because if not I actually didn't agree  
22 to go off the record, and I'd rather just keep  
23 going.

24 MR. OTTENWELLER: What tapes are you  
25 running here?



1 THE VIDEOGRAPHER: I have a two-hour tape.

2 MR. OTTENWELLER: A two-hour tape.

3 MR. KWUN: Yeah, I'd like to keep going.

4 MR. OTTENWELLER: All right. Fair enough.

5 Let's go back on the record.

6 THE VIDEOGRAPHER: I'll put us back on the  
7 record. Okay. We're back on the record at 10:33.

8 BY MR. OTTENWELLER:

9 Q Mr. Phipps, during the time period 2005  
10 through 2007, can you point to any instance when an  
11 entity used the Java APIs in a commercial product  
12 without taking a license from Sun?

13 MR. KWUN: Objection. Form.

14 THE WITNESS: I believe it would be  
15 possible to do that with research, yes.

16 BY MR. OTTENWELLER:

17 Q All right. I'm asking you: Right now can  
18 you cite to any instance?

19 A I -- the reason I make the statement that  
20 I believe I would be able to do it with research is  
21 I believe that there were users of GNU Classpath in  
22 commercial products through the -- the Linux  
23 platform, and I suspect, although I'd have to  
24 research, that there were uses of the code that was  
25 in Apache Harmony, neither of which I understand to

1 have been licensed for use by Sun.

2 Q All right. So other than Apache Harmony  
3 and the GNU Classpath project, is there any other  
4 information that you have as you sit here now in  
5 your deposition that some entity used the Java APIs  
6 without taking a license from Sun?

7 A Again, I'm cautious about making a yes-no  
8 answer to the statement overall. In the deposition,  
9 I'm not aware of any examples. I would want to do  
10 -- be advised of the question and do research before  
11 being definitive about it.

12 Q But you are aware, are you not, of many  
13 entities who took a license from Sun in order to use  
14 the Java APIs, right?

15 MR. KWUN: Objection. Form.

16 THE WITNESS: I am. I would like to ask  
17 you to clarify your use of the word "use," though,  
18 because there are different ways of using Java APIs  
19 as a -- as a programmer or as a creator of a  
20 third-party product. There's a -- there's a  
21 different arrangement that comes under the terms of  
22 different licenses.

23 BY MR. OTTENWELLER:

24 Q Right. When you refer to a practice at  
25 Sun during the time that you were an employee --

1 strike that.

2 I'll ask a different question.

3 All right. So you referred to Apache  
4 Harmony. Apache Harmony was what?

5 A Apache Harmony was a project at the Apache  
6 Software Foundation intended to create a -- an  
7 independent implementation of the Java platform  
8 licensed under the Apache software license.

9 THE REPORTER: Excuse me, Counsel, my  
10 machine is not communicating with my laptop.

11 MR. OTTENWELLER: Let's go off the record.

12 (Recess.)

13 THE VIDEOGRAPHER: Okay. We're back on  
14 the record at 10:48.

15 BY MR. OTTENWELLER:

16 Q Mr. Phipps, with respect to the OpenJDK,  
17 you -- you were somewhat instrumental in seeing that  
18 Sun would release a version of its Java APIs in an  
19 open source manner through OpenJDK, correct?

20 A It was a major part of my job function at  
21 that time.

22 Q In response to one of my prior questions,  
23 I asked you isn't it true that there were three ways  
24 in which Sun made the Java APIs available, and I  
25 listed the commercial license, the specification

1 license, and the OpenJDK, and the GNU  
2 general-purpose license.

3 You referred to a fourth way. Can you  
4 remind me again of what that fourth way was?

5 A We made the -- the Java platform available  
6 for Linux to the Debian community in the interim  
7 period while we -- between when we said that we  
8 would release Java as open source and when we  
9 actually released OpenJDK, which I think was 2007.  
10 We worked in the Debian community to make the binary  
11 -- the downloadable binary package available to them  
12 on -- on terms they were willing to accept.

13 Q All right. What I'm not picking up in  
14 your answer is what community you're referring to.

15 A It's the Debian community.

16 Q Spell that for me.

17 A D-e-b-i-a-n.

18 Q And what is that?

19 A The Debian community is a community of  
20 software developers who produce the -- probably the  
21 most important GNU/Linux distribution, the Debian  
22 distribution, upon which many other distributions  
23 are based. So, for example, the Ubuntu GNU/Linux  
24 distribution is based on that, and many government  
25 Linux distributions are based on that.

1 Q Was that for research purposes?

2 A No. That was a very -- a very key part of  
3 our business strategy.

4 Q Is that related to OpenJDK?

5 A So it related to making sure it was  
6 possible to use Java on open source platforms, which  
7 was one of our business priorities.

8 Q Okay. Going back to the time period that  
9 I have been focusing you on -- 2005 through 2007 --  
10 did you personally ever have any communications with  
11 Google about Google using the APIs through OpenJDK?

12 A No, I don't recall any communication.

13 Q Just to follow up on that, did anyone on  
14 behalf of Google tell you during that time period  
15 that it was considering using the APIs through the  
16 OpenJDK option?

17 A I did not have any communication with  
18 Google during that period.

19 Q What was your relationship with Google  
20 during the time that you were the chief open source  
21 officer?

22 A So -- so over the entire period, from 2005  
23 to 2010?

24 Q Yeah. In general, what was your  
25 relationship?

1           A       Generally, Google was another player in  
2       the open source ecosystem, and so my contact with  
3       Google when it was necessary would typically be with  
4       Crysta Bohner [phonetic] in the open source program  
5       office rather than with anyone else at Google.

6           Q       Would you say it was a cooperative  
7       relationship?

8           A       We were always on good terms with each  
9       other.

10          Q       Were you ever aware that individuals at  
11       Google criticized your work at Sun?

12          A       I was not.

13                   MR. KWUN: Objection. Form.

14       BY MR. OTTENWELLER:

15          Q       I didn't hear your answer.

16          A       I was not aware.

17                   (Pages 62 through 63 are bound in a  
18       separate transcript marked "Attorneys'  
19       Eyes Only.")

20

21

22

23

24

25

1 BY MR. OTTENWELLER:

2 Q By the way, is that the type of gutter  
3 language that people at Google are usually engaged  
4 in?

5 MR. KWUN: Objection. Form.

6 THE WITNESS: I've no opinion about what  
7 Google's internal practices are because I've got no  
8 exposure to it.

9 BY MR. OTTENWELLER:

10 Q Well, one of the names you mentioned was  
11 DiBona, right?

12 A Yeah. So -- but Chris is the -- Chris is  
13 the external contact point for the open source  
14 group.

15 Q Right.

16 A And I would never expect Chris to use a  
17 colloquial term like that in any of the  
18 communications that we conducted because they were  
19 the kind of communications where that sort of  
20 language would not be appropriate.

21 Q Do you have any --

22 A But it's -- it's entirely possible that in  
23 private contexts or in contexts where people  
24 believed they were having private conversations they  
25 might say that because open source programmers tend

1 to have robust conversations.

2 Q Do you have any idea, Mr. Phipps, what  
3 would have prompted people at Google to refer to you  
4 in such disparaging terms?

5 A No idea.

6 Q By the way, are you receiving anything of  
7 value from Google for you agreeing to testify in  
8 this case?

9 MR. KWUN: Objection. Form.

10 THE WITNESS: I believe that I'm going to  
11 be compensated for the time that I spend advising  
12 them. I have been up until now, and they're paying  
13 for my travel to come to California because it's not  
14 an easy place to get to under my own steam.

15 BY MR. OTTENWELLER:

16 Q But Google is also paying you for the time  
17 you spend in testifying and preparing to testify?

18 A I'm not actually clear what they are going  
19 -- what -- I have asked a question about what they  
20 are and are not paying for. I know they're paying  
21 for my consulting time outside of that, and I'm  
22 actually awaiting a reply on the subject of how I'm  
23 being compensated, as I don't work for Google or for  
24 Oracle at this point.

25 Q So, in other words, you're being paid by



1 Google to be a witness here, right?

2 MR. KWUN: Objection. Form.

3 THE WITNESS: I just told you that I am  
4 not aware of whether I'm going to be paid at the  
5 moment. I would -- I'm not being paid to be a  
6 witness.

7 BY MR. OTTENWELLER:

8 Q Well, then probably --

9 A I have been paid to be an advisor prior to  
10 the case.

11 Q When did that start?

12 A I'd have to ask KVN when it was, but it  
13 was end of last year sometime.

14 Q All right. And how much are they paying  
15 you?

16 A They're paying my standard hourly rate.

17 Q Which is ...?

18 A Which is 400 pounds an hour.

19 Q How much have they paid you so far?

20 A I wouldn't be able to tell you that  
21 without looking at my accounts.

22 Q Have you signed some kind of a written  
23 contract with Google under which they're obligated  
24 to pay you?

25 A I do have a contractual agreement where

1       they are obligated to pay.

2               MR. OTTENWELLER: Has that -- Counsel, has  
3       that been produced?

4               MR. KWUN: I couldn't tell you.

5               MR. OTTENWELLER: Would you look into it,  
6       please?

7               MR. KWUN: I will look into it.

8               MR. OTTENWELLER: We'd like to get a copy  
9       of that as soon as possible.

10              Q       When did you sign that contract?

11              A       I'd have to look at it.

12              Q       So when you had your first meeting with a  
13       Keker lawyer, was there a discussion then that you  
14       would get paid for your time?

15              A       There was -- so on our first meeting I was  
16       giving them advice about where to look for the  
17       history of the subject matter, and, yes, there was  
18       an agreement that they would be paying for that  
19       consulting time.

20              Q       Have they offered you anything other than  
21       a consulting fee and your expenses?

22              A       Not so far.

23              Q       Do you expect anything more than your  
24       consulting fee and reimbursement of your expenses?

25              A       I'm not expecting anything more than that.

1           Q     Okay. So it's because they were  
2 willing -- and by "they," I mean Google -- was  
3 willing to pay you that you agreed to take the trip  
4 over here from England to testify?

5           A     I would not --

6           MR. KWUN: Objection. Form.

7           THE WITNESS: I would not have been able  
8 to afford to be here if they had not paid.

9 BY MR. OTTENWELLER:

10          Q     Do you have a standard consulting practice  
11 presently?

12          A     I do have a consulting practice that  
13 charges a variety of fees depending on the client.

14          Q     In this case you're favoring Google, are  
15 you not?

16          MR. KWUN: Objection. Form.

17          THE WITNESS: I don't believe that's a  
18 true statement.

19 BY MR. OTTENWELLER:

20          Q     Well, you're not completely neutral, are  
21 you?

22          MR. KWUN: Objection. Form.

23          THE WITNESS: I -- I don't believe that I  
24 have a view about what the outcome of the case will  
25 be.

1 BY MR. OTTENWELLER:

2 Q You support Google's position, though,  
3 don't you?

4 MR. KWUN: Objection. Form.

5 THE WITNESS: My -- so I don't support  
6 Google. I do believe that programmers use APIs  
7 without the need to refer to copyright, as I've  
8 stated to you before.

9 BY MR. OTTENWELLER:

10 Q You want to see Google win this case,  
11 don't you?

12 MR. KWUN: Objection. Form.

13 THE WITNESS: The overall case is of no  
14 concern to me. I would like to make sure that open  
15 source programmers are not put under any uncertainty  
16 as to whether the use of APIs is subject to  
17 copyright, and I'd like to see that made certain,  
18 and I believe that if it's made certain in a way  
19 that causes programmers to have to refer to the  
20 copyright-ability of individual APIs independently  
21 of the implementation, it will be detrimental to the  
22 open source community.

23 BY MR. OTTENWELLER:

24 Q As a matter of personal philosophy, you  
25 are opposed to the copyright protection of -- of

1 APIs, correct?

2 A I -- in Europe I do not believe APIs are  
3 copyrightable, and I would be pleased to see America  
4 reach the same conclusion.

5 Q So, as I am asking you: You're opposed to  
6 copyright protection for APIs --

7 MR. KWUN: Objection.

8 BY MR. OTTENWELLER:

9 Q -- right?

10 MR. KWUN: Objection. Form.

11 THE WITNESS: I think the way that I put  
12 it is better.

13 BY MR. OTTENWELLER:

14 Q Well, can you answer the question I asked  
15 you? As a matter of your personal philosophy, isn't  
16 it true that you are opposed to copyright protection  
17 for APIs?

18 A Once again, I'll state that copyright --  
19 programmers should not need to worry about whether  
20 the APIs they are using are subject to copyright.  
21 And I would like to see America follow the practice  
22 of Europe in not associating copyright with APIs.

23 Q Let me show you what we marked as  
24 deposition Exhibit 5179.

25 Identify that for us, please.

1           A       This looks like my article in InfoWorld in  
2       May 2015.

3           Q       You wrote this?

4           A       I did.

5           Q       At the -- the title of the article is  
6       "Oracle versus Google. We're not screwed yet."

7                   Who is the "we" that you're referring to?

8           A       The open source community.

9           Q       And what do you mean by saying: "We're  
10       not screwed yet?"

11          A       I believe it will be very detrimental to  
12       the open source community if every time they used an  
13       API they had to also check the copyright license  
14       under the which the API was released.

15          Q       So that's why you want to see Google win  
16       this case, correct?

17          A       That's why --

18                   MR. KWUN: Objection. Form.

19                   THE WITNESS: So I repeat: I have no  
20       concern about whether Google wins or loses, but I do  
21       wish to make sure or I would be pleased to see APIs  
22       declared not copyrightable independently of the  
23       implementations.

24       BY MR. OTTENWELLER:

25          Q       In the second paragraph of your article in

1 the middle sentence you write, quote, "It looks like  
2 bad news for Google and, in turn, bad news for every  
3 programmer because its suggests APIs are  
4 copyrightable in the United States," closed quote.

5 So, first, you are of the view that if  
6 APIs are copyrightable, that's bad news for Google  
7 in this case?

8 A The comment here relates to the overall  
9 case that the -- the case is turning badly for  
10 Google, and then the comment about the "every  
11 programmer" is specifically about APIs.

12 Q Well, I'm not sure I'm following the  
13 distinction you're drawing. So let me see if I  
14 can't rephrase the question and see if you can't  
15 give me a clear answer.

16 Isn't it your view that you hold, as you  
17 come to this case to testify, that you think it is  
18 bad news for Google that there has been a ruling  
19 that APIs are copyrightable?

20 A It's obviously bad news because they have  
21 to engage in this court action that we're discussing  
22 at the moment.

23 Q And you also believe it's bad news for  
24 programmers that it's been ruled that APIs are  
25 copyrightable, right?

1           A       I do believe that if that was upheld, it  
2       would be bad news.

3           Q       So you don't want to see it upheld, do  
4       you?

5                   MR. KWUN: Objection. Form.

6                   THE WITNESS: I would be pleased to see a  
7       clarification that means that open source  
8       programmers do not need to check the license terms  
9       simply for APIs.

10          BY MR. OTTENWELLER:

11          Q       I asked you if you were neutral in this  
12       case. You're not neutral, are you?

13                  MR. KWUN: Objection. Form.

14                  THE WITNESS: I'm neutral with regard to  
15       whether Oracle or Google should win the case as an  
16       overall matter. I -- my position of when it comes  
17       to the copy- -- copyright-ability of APIs is  
18       definitely that APIs should not be considered  
19       copyrightable.

20          BY MR. OTTENWELLER:

21          Q       So you're not neutral on that score?

22          A       I have an opinion on that score, yes.

23          Q       All right. And that opinion prompted you  
24       to volunteer to come to testify; is that right?

25          A       At this point, the -- I would struggle to



1 work out what it was that actually made me decide  
2 that I would accept the invitation to come over  
3 here.

4 Q You weren't sure?

5 A I'd have to look back and work out where  
6 the decision point was, but certainly a contributing  
7 factor to agreeing to spend two weeks here, because  
8 I can't drop in from my office, is that I would very  
9 much like to see the case settled to clarify the  
10 status of APIs, and I would be pleased to share my  
11 experience to make that happen.

12 Q So if I understand what you're saying, you  
13 don't think -- let me put it this way: You think,  
14 as a matter of personal philosophy, that APIs should  
15 be available for use without any licensing  
16 restrictions, true?

17 A I would say that that was an  
18 oversimplification.

19 Q But generally correct?

20 A But general -- as a general statement, I  
21 believe that programmers should not have to worry  
22 about license terms when they use APIs.

23 Q Okay. But, of course, they do worry about  
24 them now because that's the state of affairs in the  
25 industry, right?

1 MR. KWUN: Objection. Form.

2 THE WITNESS: I believe that in the  
3 industry at the moment there is a growing concern,  
4 yes.

5 BY MR. OTTENWELLER:

6 Q That's because in the industry use of APIs  
7 is subject to license terms, right?

8 A No.

9 MR. KWUN: Objection. Form.

10 THE WITNESS: That's because the practice  
11 of the industry is that APIs are not subject to  
12 license terms, and this decision appears to reverse  
13 that industry practice and expectation.

14 BY MR. OTTENWELLER:

15 Q All right. So when you tell me, sir, that  
16 the practice in the industry is to use APIs without  
17 being subject to license terms, tell me specifically  
18 in terms of hardcore facts what you're relying upon.

19 A Okay. So if you -- if you were to go and  
20 get hold of a piece of software that's being  
21 developed in an open source community -- let's take,  
22 for example, Apache HTTPD, which is the most widely  
23 used web server on the Internet. When declarations  
24 are made at the top of the file to indicate which  
25 functions are going to be used by the program, there

1 are not, next to those declarations, any comments or  
2 repetition of copyrightable -- copyright ownership  
3 or license terms associated with the function  
4 declarations, which indicates that the programmers  
5 are not concerned about the ownership of those  
6 specific parts of the program; whereas, they're very  
7 scrupulous to ensure that copyright terms and  
8 licenses for the parts of the program that are  
9 within the file are rehearsed.

10 I would have expected that if there was a  
11 concern about the licenses for the function  
12 declarations, that the programmers involved would  
13 have some concern to document the way in which they  
14 are complying with the license terms.

15 Q Cite me the specific instances that you're  
16 referring to. Who? What? When? Tell me the  
17 details.

18 MR. KWUN: Objection. Form.

19 THE WITNESS: Okay. I think that's a very  
20 difficult question to answer just at the snap of  
21 fingers. But I'd invite you to look at any of the  
22 source files for Apache HTTPD and check whether any  
23 of those files in the function declarations that  
24 they make have any reference around the function  
25 declaration to the copyright ownership or licensing

1 terms of the function declaration.

2 I believe that you -- when you do that,  
3 you'll find that they don't, and I believe that's a  
4 common practice throughout the rest of software  
5 programming as well, that programmers never  
6 associate copyright ownership or licensing terms  
7 with declarations and programs.

8 BY MR. OTTENWELLER:

9 Q All right. So you're looking at this from  
10 the perspective of a programmer who is writing code,  
11 right?

12 A Yes.

13 Q You're not looking at it from the  
14 perspective of a user of an API, right?

15 A Well, a programmer is the user in API.

16 Q You're not looking at it from the  
17 perspective of a commercial entity who is using the  
18 API in a commercial product, are you?

19 A Well, obviously I am because that is --  
20 that is done by programmers in those commercial  
21 entities.

22 Q Okay. So, once again, I need you to be  
23 specific, sir. So we're talking about the Java  
24 APIs. Cite me, during the time period 2005 through  
25 2007, any entity who used the Java APIs in a

1 commercial product without taking a license.

2 MR. KWUN: Objection. Form.

3 THE WITNESS: That seems to be a different  
4 question to the one that you were asking before. I  
5 think you've asked me that question before. And --  
6 BY MR. OTTENWELLER:

7 Q Can you answer the question?

8 A At this point I would need to go and  
9 perform research, as I told you the last time you  
10 asked the question.

11 Q So you don't have any facts you can tell  
12 me right now?

13 A As you didn't ask me --

14 MR. KWUN: Objection. Form.

15 THE WITNESS: As you didn't ask me in  
16 advance to perform research in order to prepare for  
17 that question, I can't cite you any data.

18 BY MR. OTTENWELLER:

19 Q Okay. Now, let's talk about Apache  
20 Harmony. You made the statement, I believe, a bit  
21 earlier that Apache did not pursue the Harmony  
22 project pursuant to a license. Is that what you  
23 said?

24 MR. KWUN: Objection. Form.

25 THE WITNESS: I don't believe that I said

1       that, but --

2       BY MR. OTTENWELLER:

3           Q       Okay. It is -- it is, in fact, true, is  
4       it not, that Apache did pursue the Harmony project  
5       pursuant to Sun's specification license --

6           MR. KWUN: Objection.

7       BY MR. OTTENWELLER:

8           Q       -- right?

9           MR. KWUN: Form.

10          THE WITNESS: I haven't seen any  
11       indication within the Apache Harmony project that  
12       that would be a true statement, but I would have to  
13       go and research it to check.

14       BY MR. OTTENWELLER:

15          Q       As you sit here today, do you know one way  
16       or the other whether the Apache Software Foundation  
17       undertook the Harmony project pursuant to a license  
18       or not?

19          A       So I don't believe that question is one  
20       that is possible to answer because the Apache  
21       Software Foundation, as a legal entity, would not  
22       have engaged in a licensing activity like that. It  
23       would have been the individual programmers  
24       contributing to the project. They were mostly  
25       employees of Intel and IBM.

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1 Q Let me show you a series of emails that we  
2 marked as deposition Exhibit 5176.

3 You see that this exhibit includes an  
4 email that you, yourself, sent, right?

5 A Yes.

6 Q Okay. And as part of the email string is  
7 an email from a gentleman named Geir Magnusson to  
8 Jonathan Schwartz of Sun, correct?

9 A Yes.

10 Q Identify for the benefit of all of us who  
11 Geir Magnusson is.

12 A The role relevant to this email was as the  
13 vice president of Java for the Apache Software  
14 Foundation.

15 Q He refers to himself as the officer of the  
16 Apache Software Foundation.

17 Do you agree with that?

18 A Yes.

19 Q Okay. Now, he would know, would he not,  
20 by virtue of his position, whether the Apache  
21 Software Foundation was pursuing Harmony pursuant to  
22 a license or not?

23 MR. KWUN: Objection. Form.

24 THE WITNESS: It's likely he would.

25 MR. OTTENWELLER: Thank you.

1           Q       Turn, if you would, to the second page of  
2       this exhibit. It's the page that's numbered  
3       4632505. And in the second-to-last paragraph of his  
4       email he writes, quote, "Through Apache Harmony the  
5       ASF entered into the specification license in good  
6       faith with the expectation that Sun, as the spec  
7       lead, would reciprocate."

8           A       Can you just help me to see where that is  
9       again?

10          Q       Yes. It's the second-to-last paragraph on  
11       the second page toward the bottom.

12          A       Could you give me the first three words of  
13       the paragraph?

14          Q       "Through Apache Harmony."

15          A       Oh, okay. Got it.

16          Q       So you I'll read it again --

17          A       Yep.

18          Q       -- and you can follow along as I read it.

19                 Quote, "Through the Apache Harmony, the  
20       ASF entered into the specification license in good  
21       faith with the expectation that Sun, as the spec  
22       lead, would reciprocate," closed quote.

23                 So, Mr. Magnusson, the officer of the  
24       Apache Software Foundation is stating, is he not,  
25       that Apache was pursuing the Harmony project through



1 Sun's specification license, right?

2 MR. KWUN: Objection. Form.

3 THE WITNESS: He -- yes. It seems that  
4 would be a way of interpreting these words.

5 BY MR. OTTENWELLER:

6 Q And he would know, would he not?

7 A He --

8 MR. KWUN: Objection. Form.

9 THE WITNESS: Geir would know.

10 BY MR. OTTENWELLER:

11 Q All right. So accepting that Apache  
12 pursued Harmony through the specification license,  
13 you would agree, would you not, that Harmony is not  
14 an example of someone using the Java APIs without a  
15 license, wouldn't you?

16 MR. KWUN: Objection. Form.

17 THE WITNESS: I would need to think about  
18 your question to work out ... Prima facie, it  
19 sounds -- what you're saying sounds reasonable.

20 BY MR. OTTENWELLER:

21 Q So you referred me to two projects in  
22 response to one of my prior questions about whether  
23 you could cite any example of an entity using the  
24 Java APIs without a license. One of those examples  
25 was Apache through the Harmony project. We're now

1 going to put that to one side because the record  
2 seems to indicate they did have a license, okay?

3 A No.

4 MR. KWUN: Objection. Form.

5 THE WITNESS: No, I don't believe that's  
6 an accurate representation of what I said.

7 BY MR. OTTENWELLER:

8 Q Okay.

9 A You asked -- the question you asked me was  
10 whether the -- whether I knew of any entities, and I  
11 said that the commercial -- you were asking about  
12 commercial use in your question, and I said it was  
13 likely that there were commercial users who might be  
14 associated with projects such as Apache Harmony and  
15 GNU Classpath.

16 Q Okay. So but --

17 A So your question was about -- was not  
18 about the Apache and GNU Classpath. It was about  
19 commercial users.

20 Q Okay. Do with agree, though, based on the  
21 record that we have in front of us, that Apache's  
22 use of the Java APIs was pursuant to license?

23 MR. KWUN: Objection. Form.

24 THE WITNESS: They had entered into a  
25 license of some form.

1 BY MR. OTTENWELLER:

2 Q And there was a dispute between Apache and  
3 Sun about the terms of the license, were there not?

4 MR. KWUN: Objection. Form.

5 THE WITNESS: There was a licensing  
6 dispute between Apache and Sun.

7 BY MR. OTTENWELLER:

8 Q And it was not your responsibility to  
9 resolve that dispute, was it?

10 A It was not my specific responsibility. It  
11 was a collective responsibility of the team who were  
12 working with them.

13 Q I saw an email earlier -- I think you can  
14 confirm this without us going through it -- that you  
15 took the position when you were a Sun employee that  
16 the responsibility for resolving that license  
17 dispute between Sun and Apache was with Vineet  
18 Gupta, right?

19 MR. KWUN: Objection. Form.

20 THE WITNESS: I actually don't know what  
21 you're referring to. I would have expected it to  
22 have been the responsibility of Rich Green.

23 BY MR. OTTENWELLER:

24 Q Okay. Well, I'm --

25 A I think -- I think Vineet -- oh, I think

1 Vineet was part -- part of the team he was with --

2 Q Well, I'm just looking at an email -- I  
3 can show it to you if you think it's necessary, but  
4 you wrote to Vineet: "Naturally, you are the point  
5 of contact for this particular matter."

6 Does that refresh your recollection that  
7 you were not the person who was responsible for  
8 resolving the Apache Harmony license dispute?

9 A That's not what point of contacts means.  
10 That merely means that Vineet was the point of  
11 contact for the parties who were involved.

12 Q Do you have any knowledge, Mr. Phipps,  
13 that in connection with the Apache Harmony project,  
14 that Sun took the position that any reimplementation  
15 of the APIs by Apache that did not comply with the  
16 compatibility requirements would constitute an  
17 infringement?

18 MR. KWUN: Objection. Form.

19 THE WITNESS: So that -- I'm not quite  
20 sure how to answer that. My -- my view was that  
21 Apache was looking for a TCK in order to refer to  
22 their project as Java rather than for any other  
23 reason.

24 BY MR. OTTENWELLER:

25 Q But it was more than just the naming

1 issue, wasn't it?

2 MR. KWUN: Objection. Form.

3 THE WITNESS: So I can't speak for them,  
4 but my expectation was that they were seeking  
5 primarily to use the Java brand in association with  
6 Harmony as an addition to their use.

7 BY MR. OTTENWELLER:

8 Q But you don't have any percipient  
9 knowledge about that, do you?

10 A "Percipient" meaning ...?

11 Q Direct. Because it wasn't your  
12 responsibility?

13 MR. KWUN: Objection. Form.

14 THE WITNESS: So my responsibility was to  
15 -- was to interact with the Apache Software  
16 Foundation representatives from time to time, and  
17 their main reason for requesting a TCK was to do  
18 with Java branding.

19 MR. OTTENWELLER: Let me have this marked  
20 as Exhibit 5181, please. Well, we'll put the  
21 sticker on later. Just regard that as 5181.

22 Q Do you recognize this document? It's a  
23 four-page document?

24 A No.

25 Q Just look at the first -- first couple

1 paragraphs to see if you recognize it.

2 A It doesn't look familiar.

3 Q All right. Let me ask you to turn to the  
4 third page. That's the page in the lower right-hand  
5 corner that refers to 3 of 4, and I'm going to --  
6 you see the -- the heading "IP Specific to Sun's  
7 Java SE Implementation"?

8 A All right. I'm getting there. Okay.

9 Q Look at the text immediately above that,  
10 which I'll read into the record. Quote, "Note that  
11 an incompatible implementation is not entitled to  
12 use the Java SE IP. This applies even if the  
13 incompatible implementation avoids use of any Java  
14 brands or Java trademarks. Having an incompatible  
15 implementation call itself, quote, Fred, closed  
16 quote, does not magically resolve the IP issues."

17 Does that refresh your memory, Mr. Phipps,  
18 that Sun, in connection with Harmony, took the  
19 position that if the Harmony project did not pass  
20 the compatibility test, it would -- the use of the  
21 APIs would be a violation of Sun's intellectual  
22 property?

23 A That --

24 MR. KWUN: Objection.

25 THE WITNESS: That --

1 MR. KWUN: Object- -- you have to let me  
2 finish my objection.

3 THE WITNESS: Okay. Finish your  
4 objection.

5 MR. KWUN: Objection. Form.

6 THE WITNESS: No, that doesn't refresh my  
7 recollection.

8 BY MR. OTTENWELLER:

9 Q Looking back at the first page, do you  
10 have any reason to question whether this was a  
11 Sun-authored document?

12 MR. KWUN: Objection. Form.

13 THE WITNESS: It's pretty hard to tell who  
14 authored it, but it was -- there's -- there's a URL  
15 at the bottom that says it was taken from Java.net.  
16 So it's likely it was Sun authored.

17 MR. OTTENWELLER: I'm sorry. What was his  
18 last phrase?

19 (Record read by the Reporter as follows:

20 "ANSWER: It's pretty hard to tell who  
21 authored it because there's a URL at the  
22 bottom that says it was taken from  
23 Java.net. So it's likely it was Sun  
24 authored." [sic])

25 THE WITNESS: I didn't say "because," I

1 don't think. I just -- I just said "It's pretty  
2 hard to work out who authored it, but there is --" I  
3 think maybe that's what you heard.

4 BY MR. OTTENWELLER:

5 Q Tell me, if you would, what GNU Classpath  
6 is or was.

7 A So GNU Classpath was a project to create  
8 an independent implementation of the Java class  
9 libraries under the GNU GPL.

10 Q The GNU Classpath project was not  
11 authorized by Sun, was it?

12 A It was not. I don't recall anyone asking  
13 for authorization. So it was not denied either.

14 Q But as far -- we'll get to that.

15 But as far as you know, you never saw any  
16 document that indicated that Sun authorized the GNU  
17 Classpath project, right?

18 A I'm not aware of any such document.

19 Q Let me show you what has been marked as  
20 trial Exhibit 5246. 5246 is an email from one  
21 Matthew Marquis at Sun to a Mr. Kim.

22 Do you see that at the top?

23 A Yep.

24 Q Now, you know who Matthew Marquis is,  
25 correct?



1           A       I think he was involved in the legal team  
2       at Sun.

3           Q       He was a lawyer --

4           A       Yeah.

5           Q       -- in the Sun legal department?

6           A       He wasn't someone that I routinely  
7       interacted with.

8           Q       But you recognize the name?

9           A       Yeah.

10          Q       Okay. Do you know, sir, that with respect  
11       to the GNU Classpath project there was a dispute  
12       between Sun and a consortium of Korean wireless  
13       companies about whether they could use the APIs  
14       through Classpath?

15          A       No.

16          Q       Is that all completely new to you?

17          A       Completely new to me.

18          Q       All right. Look, if you would, at --

19          A       I think this dates from before I had  
20       responsibility in the area.

21          Q       For the record, it is -- the email is  
22       dated March 2, 2003.

23          A       Yeah.

24          Q       Okay. In the middle of the second  
25       paragraph you see there is a -- a subparagraph two?

1 Why don't you find that --

2 A Yeah.

3 Q -- and then I'll ask you about that.

4 So I'm going to read the statement that  
5 Mr. Marquis made to Mr. Kim -- or Dr. Kim. Quote,  
6 "Sun has not authorized the GNU organization or any  
7 third party to copy it's specifications or create  
8 derivative works of those specifications," closed  
9 quote.

10 And then I'm going to drop down to about  
11 seven lines. There's another sentence that begins:  
12 "Therefore, it is beyond --" do you see that?

13 A Yes, I see that.

14 Q So I'll read that into the record.  
15 "Therefore, it is beyond a shadow of a doubt that  
16 using the GNU Classpath derivative work to develop  
17 the WIPI --" that's W-I-P-I "-- specification will  
18 not avoid copyright infringement," closed quote.

19 My first question, based on what I read to  
20 you, Mr. Phipps -- the reference to the GNU  
21 Classpath is a reference to the GNU Classpath  
22 project that we've been discussing, right?

23 A I believe it is.

24 MR. KWUN: Objection. Objection. Form.

25 THE WITNESS: I believe it is.

1 BY MR. OTTENWELLER:

2 Q And Mr. Marquis is taking the position on  
3 behalf of Sun that the GNU Classpath project is not  
4 authorized, right?

5 MR. KWUN: Objection. Form.

6 THE WITNESS: He appears to be  
7 communicating that view privately to Mr. Kim, yes.

8 BY MR. OTTENWELLER:

9 Q And it is true, is it not, based on what  
10 we have in front of us, that Mr. Marquis, on behalf  
11 of Sun, is taking the position that the use on the  
12 GNU Classpath project would constitute a copyright  
13 infringement of Sun's rights, correct?

14 MR. KWUN: Objection. Form.

15 THE WITNESS: It seems that he is saying  
16 that that would be an expectation.

17 BY MR. OTTENWELLER:

18 Q All right. So looking at the Apache  
19 Harmony project and the GNU Classpath project --  
20 those two projects together -- with respect to  
21 Harmony, we have a situation in which the Apache  
22 Software Foundation operated under a Sun license,  
23 right?

24 MR. KWUN: Objection. Form.

25 THE WITNESS: Apache had secured a

1 specification license and were also part of the  
2 JSPA.

3 BY MR. OTTENWELLER:

4 Q And with respect to GNU Classpath project,  
5 we have a situation that GNU did not have Sun's  
6 authorization to pursue that project, correct?

7 MR. KWUN: Objection. Form.

8 THE WITNESS: I don't think that's what  
9 this says. This simply says that the -- that if  
10 Mr. Kim was to use the software, he might experience  
11 a copyright violation.

12 BY MR. OTTENWELLER:

13 Q Well, if he were to use the software from  
14 the Classpath project, right?

15 MR. KWUN: Objection. Form.

16 THE WITNESS: Well, you're -- you're  
17 drawing a conclusion that I don't believe that the  
18 conclusion is warranted by the document.

19 BY MR. OTTENWELLER:

20 Q Well, what would you make, then, sir, of  
21 the statement -- the first statement that I read,  
22 quote, "Sun has not authorized the GNU organization  
23 or any third party to copy its specifications or  
24 create derivative works of those specifications"?  
25 That's a statement that the reimplementations of the

1 APIs was not authorized by Sun, isn't it?

2 MR. KWUN: Objection. Form.

3 THE WITNESS: I don't believe it -- that  
4 that is a necessary conclusion of that statement.  
5 The statement is talking about the derivative works  
6 of the specifications, but it's not specifically  
7 talking about the APIs, and I would have expected  
8 that statement to refer to the -- the need for a  
9 license to get -- to license patents in the  
10 implementation rather than the APIs.

11 BY MR. OTTENWELLER:

12 Q Well, isn't it true that the GNU Classpath  
13 project entailed a reimplementation of the Java  
14 APIs?

15 A It -- so the GNU Classpath project was a  
16 reimplementation of the Java class libraries, and  
17 that inherently would have required using the same  
18 function calls; otherwise, it would not be an  
19 implementation.

20 Q Just so we're clear, the class libraries  
21 are the same as the APIs, right?

22 A That's not correct. The class libraries  
23 are the implementations that are -- that are turned  
24 into a binary that is then used by programs that  
25 include the declarations.

1 Q But they relate to the APIs, don't they?

2 A The -- so the -- the class files are the  
3 implementations of the computer code that is  
4 necessary to execute the API when it is called.

5 Q And isn't it true that the Classpath  
6 project involved a reimplementation of the Java  
7 APIs?

8 A That's correct.

9 Q All right. And to the extent that Sun,  
10 through Mr. Marquis, is taking the position that  
11 that reimplementation was not authorized -- and  
12 that, in fact, is how you read this document, is it  
13 not?

14 MR. KWUN: Objection. Form.

15 THE WITNESS: So I think I said it better  
16 last time.

17 BY MR. OTTENWELLER:

18 Q Let me hear it again.

19 A So the -- the bullet 2 that you refer to  
20 indicates that Sun has not authorized -- does not  
21 indicate that there is a -- that they are doing a  
22 bad thing. It indicates that they have not been  
23 authorized.

24 Q Right. They haven't been authorized to do  
25 what they're -- they were doing, right?

1 MR. KWUN: Objection. Form.

2 THE WITNESS: Yeah, I don't know that I  
3 would put it that way. I'd say that -- that what  
4 this is telling you is that Sun has not authorized  
5 GNU to do a thing. That does not imply necessarily  
6 that they're doing something which is infringing.  
7 It simply indicates that Sun has not authorized the  
8 activity.

9 BY MR. OTTENWELLER:

10 Q Have --

11 A Because to say that it's infringing  
12 implies that some sort of a license is required,  
13 which, for an API it wouldn't be.

14 Q Well, in the second reference I read where  
15 you referred to a copyright infringement, that  
16 certainly indicates activity that doesn't have the  
17 permission of a license, doesn't it?

18 A This --

19 MR. KWUN: Objection. Form.

20 THE WITNESS: So the sentence you're  
21 referring to, which is sentence 5, is very  
22 complicated, and it indicates that Mr. Kim's  
23 organization, whichever it is, should expect to be  
24 infringing copyright if they used GNU Classpath, but  
25 it does not actually make any direct allegations

1 about GNU's project.

2 BY MR. OTTENWELLER:

3 Q Now that you see this, this document,  
4 which predated the time where you had any  
5 involvement with GNU Classpath, doesn't this  
6 indicate to you that Sun took the position that the  
7 GNU Classpath reimplementation of the APIs was not  
8 authorized because GNU never took a license?

9 MR. KWUN: Objection. Form.

10 THE WITNESS: So I wouldn't instantly come  
11 to that conclusion from this communication which I  
12 have not seen before.

13 BY MR. OTTENWELLER:

14 Q All right. But -- so you actually lack  
15 some knowledge about the interaction between Sun and  
16 others with respect to Classpath, right?

17 MR. KWUN: Objection. Form.

18 THE WITNESS: So I was not involved in the  
19 relationship with the GNU Classpath project prior to  
20 taking over the role of chief open source officer.

21 BY MR. OTTENWELLER:

22 Q Eventually the GNU Classpath project came  
23 to an end, right?

24 MR. KWUN: Objection. Form.

25 THE WITNESS: It's transformed into the



1 IcedTea project.

2 BY MR. OTTENWELLER:

3 Q But as the Classpath project, it ceased to  
4 exist, right?

5 MR. KWUN: Objection. Form.

6 THE WITNESS: I'm not sure that's actually  
7 a true statement. I believe the Class- -- the  
8 developers working on the Classpath project became  
9 supporters of the OpenJDK work through IcedTea, and  
10 I believe some of the work they did in GNU Classpath  
11 may well have been used within that implementation.

12 BY MR. OTTENWELLER:

13 Q Can you, as you sit here today,  
14 Mr. Phipps, cite a single example of a commercial  
15 entity who used a reimplementations of the Java APIs  
16 either with express authorization from Sun or  
17 through a Sun license? I actually -- I don't think  
18 that came out right. So let me --

19 A It was massively complex.

20 Q It was. So let's try to simplify it.

21 As you sit here today, can you cite a  
22 single incident in which an entity used a  
23 reimplementations of the Java APIs outside the  
24 context of a license or outside the context of a  
25 project that Sun did not authorize?

1 MR. KWUN: Objection. Form.

2 THE WITNESS: I can't hold that all in my  
3 head at the same time, I'm afraid.

4 MR. OTTENWELLER: All right. Let's break  
5 it down.

6 Q Can you cite a single example of an entity  
7 who has used a reimplementations of the Java APIs for  
8 commercial purposes outside the context of a  
9 license?

10 MR. KWUN: Objection. Form.

11 THE WITNESS: A license from whom?

12 BY MR. OTTENWELLER:

13 Q From Sun.

14 A Okay. I believe it would be possible to  
15 find such an entity, but in this deposition I cannot  
16 do so without research.

17 Q As you sit here today, Mr. Phipps, can you  
18 cite a single example of an entity who used a  
19 reimplementations of the Java APIs outside the  
20 context of a Sun authorization?

21 MR. KWUN: Objection. Form.

22 THE WITNESS: Yeah, I'm still struggling,  
23 parsing that statement.

24 MR. OTTENWELLER: Okay. Let me rephrase  
25 it.

1           Q     As you sit here today, can you identify a  
2     single incident in which an entity used a  
3     reimplementation of the Java APIs for commercial  
4     purposes where the reimplementation was authorized  
5     -- I'm sorry -- where the reimplementation was not  
6     authorized by Sun?

7           MR. KWUN:   Objection.   Form.

8           THE WITNESS:   So I'm still struggling to  
9     parse that question.   My suspicion is that, were I  
10    to understand your question, the answer would be  
11    that I think it's quite likely that there are  
12    companies who are using GNU Classpath, which is, I  
13    think, what you're trying to allude to without  
14    saying the name, for commercial purposes because  
15    they would have used it through the Debian  
16    distribution over its entire lifetime.

17           So there's almost certainly -- anyone who  
18    used Debian for commercial purposes and used Java  
19    within the context of Debian would be very likely to  
20    have used GNU Classpath.

21   BY MR. OTTENWELLER:

22           Q     Cite me the specifics.

23           A     I have no knowledge of specific users of  
24    Debian, but there are hundreds, if not thousands, of  
25    them.

1 Q How do you know that?

2 A Because it's extremely clear.

3 Q Is that the basis of your knowledge?

4 A Well, sitting in this room without prior  
5 notice of the question, without research, it's not  
6 possible to provide you with an enumerated list of  
7 those users, but given notice of the question and  
8 given the opportunity to perform research, I could  
9 provide you with at least one example of a  
10 commercial user who used Debian and used GNU  
11 Classpath from within it.

12 Can I get a refill, please?

13 Q Go back, if you would, sir, to the very  
14 first disclosure we've looked at.

15 A Is that 1767?

16 Q Yes. 5174. That's the legal pleading in  
17 the case.

18 A 5174.

19 MR. KWUN: The excerpt of a legal  
20 pleading, but yes.

21 MR. OTTENWELLER: Correct.

22 THE WITNESS: Oh, it's got a different --  
23 it's got a different number at the top than the  
24 sticker at the bottom. Okay. One says 1767 at the  
25 top, if you look.

1 MR. OTTENWELLER: Yeah, okay.

2 Q So this disclosure from Google cites a  
3 single fact that refers to this. Quote, "Sun's CEO  
4 authorized him to reach out to the open source  
5 community, including GNU Classpath personnel, to  
6 assist with Sun's own implementation of the APIs in  
7 OpenJDK."

8 Now, who was providing the assistance  
9 being referred to?

10 A Okay. So the assistance that would have  
11 been given there would have been from -- I don't  
12 have everyone's names in front of me. I think  
13 they've been referred to before, but people like  
14 Dalibor, Mark. Probably Tom Tromey was one of the  
15 people that was referred to here. The people who  
16 were generally involved in maintaining GNU  
17 Classpath.

18 Q They were to provide assistance to whom?

19 A They were -- so because OpenJDK is open  
20 source, they're able to create improvements to it  
21 that they can then offer to the code base, and the  
22 way they did that in this case was by creating the  
23 IcedTea project, which created function implementing  
24 the APIs that had been stubbed out by Sun because  
25 they could not be made open source.

1           Q       This refers to assisting with Sun's own  
2       implementation of the APIs in OpenJDK.

3           A       It doesn't imply that Sun's -- that  
4       they're assisting -- it's -- I understand what it  
5       means.

6           Q       Well, tell me.

7           A       It says -- so what the IcedTea project was  
8       doing was -- so we have to roll back. OpenJDK, when  
9       it was first released, had a number of functions  
10      that were not implemented for IP reasons that I'm  
11      not completely sure about, things like the media  
12      APIs, and those were stubbed out so that programs  
13      would compile without errors, but when programs  
14      called the function, it would actually do nothing.

15                 And the IcedTea project implemented mostly  
16      Linux implementations of those functions so that the  
17      functionality available on Linux would be the  
18      equivalent of the functionality that was available  
19      on the platforms that Sun was directly creating,  
20      such as Windows.

21          Q       How --

22          A       And so they assisted the project in the  
23      sense that -- oh, they assisted with Sun's  
24      implementation of the APIs in the sense that they  
25      were writing implementations for the -- to replace

1 those stubs on Linux. So it was a full  
2 implementation. They were not, however, employees  
3 of Sun.

4 Q How did Mr. Schwartz, the CEO of Sun,  
5 authorize you to reach out to the open source  
6 community?

7 A He had encouraged me from the beginning of  
8 his tenure as CEO to go and work on improving Sun's  
9 reputation with the open source community and to  
10 create a consulting group inside Sun to help our  
11 product teams improve that set of relationships.

12 Q Did he tell you in a verbal communication?

13 A He certainly told me in a verbal  
14 communication.

15 Q Did he ever put it in writing?

16 A I really don't recall, and you have much  
17 better access to my email than I do, as I last saw  
18 this email when it was automatically deleted one  
19 year after it was created. So who knows? Maybe  
20 there was an email many years ago.

21 MR. OTTENWELLER: All right. We are at  
22 the end of the two-hour mark. I am going to say  
23 that Oracle is reserving its right to take more  
24 deposition time with Mr. Phipps. Given Google's  
25 position that he is a key witness in the case, two

1 hours is far insufficient, and I have more questions  
2 that I need to ask and more topics that I want to  
3 pursue.

4 MR. KWUN: Well, we -- we think we're  
5 done. But -- but certainly if you want to make a  
6 motion, we'll address it then.

7 MR. OTTENWELLER: Will you make -- will  
8 you make Mr. Phipps available after he gets some  
9 rest?

10 MR. KWUN: No.

11 MR. OTTENWELLER: All right. Given my  
12 reservation, that concludes the deposition today.

13 THE VIDEOGRAPHER: Okay. Then we are off  
14 the record. The time is 11:47.

15 (Exhibit 5181 was marked for  
16 identification by the court reporter.)

17 (TIME NOTED: 11:47 A.M.)

18

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1 I, SIMON PHIPPS, do hereby declare under  
2 penalty of perjury that I have read the foregoing  
3 transcript; that I have made any corrections as  
4 appear noted, in ink, initialed by me, or attached  
5 hereto; that my testimony as contained herein, as  
6 corrected, is true and correct.

7 EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_,  
8 2016, at \_\_\_\_\_, \_\_\_\_\_.  
9 (City) (State)

10  
11  
12  
13 \_\_\_\_\_  
14 SIMON PHIPPS

15 VOLUME I  
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25

1 I, the undersigned, a Certified Shorthand  
2 Reporter of the State of California, do hereby  
3 certify:

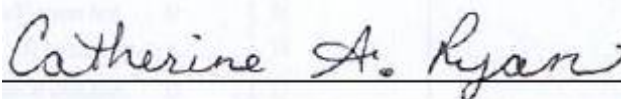
4 That the foregoing proceedings were taken  
5 before me at the time and place herein set forth;  
6 that any witnesses in the foregoing proceedings,  
7 prior to testifying, were administered an oath; that  
8 a record of the proceedings was made by me using  
9 machine shorthand which was thereafter transcribed  
10 under my direction; that the foregoing is a true  
record of the testimony given.

11 Further, that if the foregoing pertains to the  
12 original transcript of a deposition in a Federal  
13 Case, before completion of the proceedings, review  
14 of the transcript [ ] was [ ] was not requested.

15 I further certify that I am neither  
16 financially interested in the action nor a relative  
17 or employee of any attorney or any party to this  
18 action.

19 IN WITNESS WHEREOF, I have this date  
20 subscribed my name.

21 Dated: 5/7/16

22  
23 

24 Catherine A. Ryan, RMR, CRR

25 CSR No. 8239

[&amp; - allowed]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2014. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

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